

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DIOMED INC.,

Civil Action No. 104-CV 10444-RGS

Plaintiff,

v.

DECLARATION OF
J. THOMAS VITT

VASCULAR SOLUTIONS, INC.,

Defendant.

I, J. Thomas Vitt, declare:

1. I am a partner at Dorsey & Whitney LLP, in Minneapolis, Minnesota, and lead counsel for the defendant, Vascular Solutions, Inc. ("VSI") in this action. I offer this declaration in support of VSI's claim construction memorandum.

2. I attach true and correct copies of the following:

Exhibit 1: United States Patent No. US 6,398,777;

Exhibit 2: File history of Patent No. US 6,398,777;

Exhibit 3: United States Patent No. US 4,564,011 (Goldman);

Exhibit 4: United States Patent No. US 5,531,739 (Trelles);

Exhibit 5: United States Patent No. US 5,022,399 (Biegeleisen);

Exhibit 6: Article, "Use of the Venoscope for the treatment of varicose veins," by K. Biegeleisen and R. D. Nielsen;

Exhibit 7: Article, "Techniques for Endoscopic and Non-Endoscopic Intracorporeal Laser Applications," by B. Fuchs, et al.;

Exhibit 8: Dictionary definitions relevant to construction of the claim terms “placing,” “blood vessel,” “emptying,” and “bursts.”;

Exhibit 9: Diomed’s Proposed Interpretation of Asserted Claims;

Exhibit 10: AngioDynamic’s Proposed Interpretation of Asserted Claims;

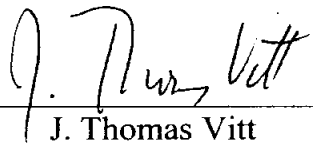
Exhibit 11: Vascular Solutions’ Proposed Interpretation of Asserted Claims;

Exhibit 12: Order from the United States Court of Appeals for the Federal Circuit dated July 21, 2004, granting the petition for rehearing *en banc* in the case of *Phillips v. AWH Corp.*, 363 F.3d 1207 (Fed. Cir. 2004);

Exhibit 13: US Provisional Patent Application No. 60/118,050;

Exhibit 14: US Provisional Patent Application No. 60/119,235.

I declare under penalty of perjury under the laws of the State of Minnesota that the foregoing is true and correct and that this declaration was executed on September 30, 2004, at Minneapolis, Minnesota.



J. Thomas Vitt